

IBKsPARc

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

03 CR 1197 (SHS)

5 UZAIR PARACHA,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 November 20, 2018  
2:30 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 Interim United States Attorney for the  
Southern District of New York  
17 KARL N. METZNER  
ELIZABETH HAFNT  
Assistant United States Attorneys

18 JOSHUA L. DRATEL  
19 Attorney for Defendant  
20  
21  
22  
23  
24  
25

IBKsPARC

1 (Case called)

2 MR. METZNER: Carl Metzner and Elizabeth Hanft for the  
3 government.

4 Good afternoon, your Honor

5 THE COURT: Good afternoon.

6 MR. DRATEL: Good afternoon, your Honor. Joshua  
7 Dratel for Mr. Paracha, standing beside me.

8 THE COURT: Good afternoon. You may be seated in the  
9 courtroom.

10 MR. DRATEL: The spectators are all family members of  
11 Mr. Paracha and another attorney.

12 THE COURT: I'm sorry?

13 MR. DRATEL: The spectators are family members, and  
14 an attorney. There is also an attorney here as well. I am  
15 identifying for the court's benefit.

16 THE COURT: Thank you.

17 I realize that everyone is here in support of  
18 Mr. Paracha, I take it in support of the bail application.

19 We had this conference scheduled, and then subsequent  
20 to the scheduling of that, Mr. Dratel made a bail application,  
21 which, as we discussed when you indicated to the court will  
22 that you were intending to do that, I said that was rather  
23 unusual given the nature of the charges.

24 I have read your materials. I have read the  
25 government's materials. When I say the materials, I mean the

IBKsPARc

1 submissions that each of you made; Mr. Dratel's letter dated  
2 November 9 and the government's memorandum is document 139  
3 filed on November 19.

4 It is your application, Mr. Dratel. Again, I've read  
5 the materials. What would you like to say?

6 MR. DRATEL: Only, your Honor, that I think the  
7 unusual nature of this case and the time frame of this case,  
8 the arc of this case from the beginning puts it in a very  
9 different posture than a typical case, and the presumption  
10 has been met, has been satisfied.

11 In terms of the rebuttal presumption, I think that  
12 probably the most unusual part of this case is that, given the  
13 15-year sentence that Mr. Paracha has already served and given  
14 that the concept of risk of flight in this situation and even  
15 danger to the community, it is almost a non sequitur in the  
16 sense that, given the court's remarks at the prior conferences,  
17 it would be conceivable if this case could be resolved and he  
18 would be out anyway. You know what I mean?

19 THE COURT: As I have indicated, that is not for me.  
20 The parties have to do that, and nobody has told me anything  
21 about what, if anything, is happening in that regard.

22 MR. DRATEL: I understand.

23 What I'm saying is that the additional imprisonment  
24 of Mr. Paracha, under whatever resolution of the case seems  
25 gratuitous at this point, is not achieving anything and that he

IBKsPARc

1 is a prime candidate for bail, given the family support, given  
2 all the sureties. These aren't even sureties, they are other  
3 family members. The sureties couldn't make it today. This  
4 isn't necessarily the sureties. That is the family support  
5 that could be in court today.

6 Given all those circumstances, I think this is an  
7 appropriate and compelling application.

8 THE COURT: Well, my concern is, one, that there is  
9 the presumption. I do recognize that it is rebuttal, but it is  
10 a statutory presumption.

11 The concern is also, the first of the factors that are  
12 listed under 3142(g), that is, the nature and circumstances of  
13 the offense charged, which everyone agrees are serious charges.  
14 He is not a citizen, so there is always that risk of flight. I  
15 think there are substantial sureties in place and, obviously,  
16 he has the support of a number of people, as reflected not only  
17 by those who are here, but also in the attachments to your  
18 submission. The nature and circumstances of the offense  
19 charged, I think, is serious. It has to be dealt with.

20 Mr. Metzner, what would you like to say?

21 MR. METZNER: Your Honor, I think we made our position  
22 clear in the papers. Unless the court has questions, we will  
23 rely on the arguments we made in the submission.

24 THE COURT: I think given the existence of the  
25 rebuttal presumption and my consideration of all of the factors

IBKsPARc

1 in 3142(g), I am going to find that there is no conditions or  
2 combination of conditions that -- let me get the statutory  
3 language -- no condition or combination of conditions that will  
4 reasonably assure the safety of the community or the presence  
5 of the defendant, reasonably assure the appearance of the  
6 defendant and the safety of the community.

7 I am finding there is no such conditions and I am  
8 denying the application for bail at this time.

9 I do see that a schedule has been set by the  
10 Second Circuit. The government brief is due September 24.  
11 Defendant's brief, March 25. Reply brief, April 4. No  
12 argument date has been set.

13 Are the parties continuing to attempt to resolve this  
14 at this level?

15 MR. METZNER: Your Honor, literally from the 5th of  
16 July, which was the first business day after your Honor's  
17 opinion, the government has made clear that it is open to  
18 conversations with Mr. Paracha through Mr. Dratel.

19 We have reiterated that on multiple occasions, and in  
20 the now nearly five months that has past, we are awaiting the  
21 defendant's response.

22 THE COURT: Mr. Dratel, I am handicapped because I  
23 can't involve myself in these, but that is surprising to hear,  
24 given the fact, as you have said, that the defendant has been  
25 incarcerated for 15 years already and has been, according to

IBKsPARC

1 the papers -- and I have no reason to doubt it -- a model  
2 prisoner throughout that time.

3 MR. DRATEL: Yes.

4 All I would contest with respect to Mr. Metzner's  
5 remark is that we are waiting for a spot. We have had  
6 discussions, we have had some response, but we have not made  
7 progress that would bring us to the court for a resolution.

8 We will keep that in mind and look for opportunities.

9 THE COURT: What is the path to resolve it, again,  
10 without the involvement of the court, if you feel free to --

11 MR. DRATEL: I would just say, for want of a better  
12 explanation, for us to be creative and use our imaginations in  
13 ways that both parties could be satisfied.

14 THE COURT: Well, do it.

15 MR. DRATEL: Thank you, your Honor. I appreciate  
16 that. Believe me.

17 THE COURT: We don't have another conference set.  
18 Lets set another conference so that we keep this moving  
19 forward.

20 When do the parties want to come back to the court?

21 MR. DRATEL: I think after New Year's. I have a trial  
22 beginning a couple weeks that will take most of December  
23 anyways. The government will be working on its brief. Maybe  
24 after New Year's.

25 THE COURT: It would make more sense to be able to

IBKsPARc

1 resolve this before additional time and effort by the parties.

2 MR. DRATEL: My trial should be done by the --

3 THE COURT: No, but you need time with Mr. Metzner.

4 It's been since July and sounds like not much progress has been  
5 made. Presumably you need more than a couple weeks. If you  
6 don't think that is true, I am perfectly prepared to move now.

7 MR. DRATEL: Whatever the court thinks is a good time  
8 frame. We will keep trying in between.

9 THE COURT: There has to be enough time for progress  
10 to be made, substantial progress to be made. I'm not privy to  
11 those discussions.

12 Should we set it for the end of January?

13 MR. DRATEL: Sure.

14 Your Honor, the week of the 22nd -- the 29th is  
15 actually better.

16 THE COURT: The parties can come back to me and  
17 request a conference at any time. I would encourage them to  
18 do so.

19 January 30, 3:30, for status conference.

20 Thank you.

21 MR. METZNER: Your Honor, may I?

22 THE COURT: I'm sorry. Yes.

23 MR. METZNER: Out of an abundance of caution, could I  
24 request exclusion to the speed trial clock, to the extent it is  
25 running, to January 30 of next year?

IBKsPARC

1 MR. DRATEL: No objection.

2 THE COURT: So your application is, if it is running,  
3 you want an exclusion?

4 MR. METZNER: Yes, please, Judge.

5 THE COURT: The government, having moved for an  
6 execution of time until January 30, I hereby grant it, and no  
7 objection having been stated by the defense, I exclude time  
8 from today until January 30 pursuant to 18 U.S.C.  
9 3161(h)(7)(A), and I do make the finding that the ends of  
10 justice outweigh the interest of the public and the defendant  
11 in a speedy trial. It is to enable the parties to attempt to  
12 resolve this matter in the light of my decision granting a  
13 new trial.

14 Thank you.

15 MR. METZNER: Thank you, your Honor.

16 MR. DRATEL: Thank you.

17 (Adjourned)  
18  
19  
20  
21  
22  
23  
24  
25